

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

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MEMORANDUM

DATE: FEB 29 2012

TO: Laura Bailey Brown, Assistant Attorney General
Attorney General's Office

FROM: Ricardo Jones, Environmental Specialist
Hazardous Waste Program

SUBJECT: Hand-delivery of Fully-Signed Settlement Agreement

AWMD / WEMM
MAR 08 2012
RECEIVED

Laura, with this memorandum, I am hand-delivering the signed Settlement Agreement with Wal-Mart Stores, Inc., Bentonville, Arkansas.

Please take all necessary actions to copy, distribute, and finalize the Agreement.

Thank you very much for your assistance in this matter.

RJ:cah

Attachment

c: Beth Koesterer, USEPA Region 7

514061



RCRA

SETTLEMENT AGREEMENT

This Settlement Agreement is made among the Missouri Department of Natural Resources (Department), the Attorney General, and Wal-Mart Stores, Inc. (Wal-Mart).

WHEREAS, Wal-Mart is a corporation that operates Wal-Mart and Sam's Club Stores across the nation and return centers in Bentonville, Arkansas; Indianapolis, Indiana; Las Vegas, Nevada; Waco, Texas; Spartanburg, South Carolina; Johnstown, New York; and previously, Macon, Georgia. Wal-Mart sells common consumer products, some of which may be considered hazardous waste (when discarded) under federal or state law. A portion of Wal-Mart's operations are regulated under the Missouri Hazardous Waste Management Law, § 260.350 et seq., RSMo and its implementing regulations (the Law).

WHEREAS, Wal-Mart contracted with an entity that became known as Greenleaf, L.L.C. (Greenleaf) to receive, repackage and otherwise prepare certain household products including charcoal, potting soil, fertilizer, and pesticides, for reuse and re-sale. Such products, alleged to be wastes by the Department and the Attorney General, were not properly managed at Greenleaf.

WHEREAS, on January 15 and 16, 2008, the Department inspected the Greenleaf facility in Neosho, Missouri.

WHEREAS on March 24, 2008, the Department issued Notice of Violation (NOV) Number 5580E to Wal-Mart. In NOV Number 5580E, the Department alleges three violations of the Law, including, but not limited to: failure to determine if a solid waste is a hazardous waste; failure to use an authorized hazardous waste treatment/storage/disposal or resource recovery facility; and generator not able to demonstrate legitimate recycling of waste.

WHEREAS, Wal-Mart has now properly removed and disposed of all materials from the Greenleaf facilities, located at 13960 Palm Road, Neosho, MO 64850 and 420 Highway 71 Business South, Pineville, MO 64843, under the supervision of the Department and has demonstrated to the Department that it addressed the alleged violations noted above.

WHEREAS, § 260.425, RSMo, provides that the Department and the Attorney General may seek to recover \$10,000.00 in penalties per violation for each day, or part thereof, that the Law, has been or is being violated.

WHEREAS, the Department and Wal-Mart have discussed terms upon which to amicably resolve any and all claims that may be made against Wal-Mart for recovery of statutory civil penalties for the alleged violations set forth in NOV Number 5580E, without Wal-Mart admitting the validity or accuracy of such allegations, which Wal-Mart specifically denies.

NOW, THEREFORE in consideration of the mutual promises contained in this Settlement Agreement and other good and valuable consideration, the Department, the Attorney General, and Wal-Mart agree as follows:

1. The provisions of this Settlement Agreement shall apply to and be binding upon the parties executing this agreement, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties (also referred to as Wal-Mart, MDNR, and the Attorney General).

2. Wal-Mart, in compromise and satisfaction of all allegations in NOV Number 5580E, agrees to pay a civil penalty of \$214,378.00. At the time it executes this Agreement, Wal-Mart shall remit payment in the following manner:

(a) One certified or cashier's check in the amount of \$214,378.00 made payable to the "State of Missouri (Newton County Treasurer as Trustee for the Newton County School Fund)" at the time Wal-Mart returns the signed Settlement Agreement to the Attorney General. The signed Settlement Agreement and check shall be sent to "Attorney General's Office, Financial Services Division, P.O. Box 899, Jefferson City, Missouri 65102-0899, Attn.: Collection Specialist." Receipt of the Wal-Mart \$214,378.00 payment will be acknowledged by the

Department's and the Attorney General's signatures on the Agreement and the check shall be held by the Attorney General until the Effective Date of this Settlement Agreement.

(b) Wal-Mart also agrees to pay the Department's expenses, interest, and unpaid fees and taxes in the amount of \$4,082.00, in the form of a certified or cashier's check made payable to the "State of Missouri (Hazardous Waste Program)". The check shall be sent at the time Wal-Mart returns the signed Settlement Agreement to the Attorney General and shall be held by the Attorney General until the Effective Date of this Settlement Agreement.

3. Further, Wal-Mart agrees to spend the amount of \$1,050,000.00 for a Supplemental Environmental Project (Project) to sponsor pesticide collection events for rural Missouri subject to the provisions of this Section 3. Wal-Mart, or its designee, shall properly pack, mark, label, transport and dispose of pesticides that are collected as part of this event and promote the pesticide events. The Department may seek cost recovery from Wal-Mart for all reasonable expenditures the Department incurs associated with promoting and overseeing the Project activities. The cost recovery amounts paid to the Department by Wal-Mart shall be included as part of the \$1,050,000.00 which Wal-Mart is agreeing to expend for the Project. In order to seek cost recovery, the Department shall provide Wal-Mart with a statement of costs within 30 days following each pesticide collection event. Wal-Mart agrees to pay the Department expenses, within 30 days of receipt of a statement of costs from the Department, in the form of a check made payable to the "state of Missouri (Hazardous Waste Program)." The check will be sent to: Accounting Program, Department of Natural Resources, P.O. Box 477, Jefferson City, MO 65102-0176.

A) As of the effective date of this Settlement Agreement, Wal-Mart agrees to provide the Department monthly statements once expenses are incurred showing the dollar amount for work performed as part of the Project from the previous month and the total amount

for services provided to date. This monthly statement is due the 20th of the month following the end of the preceding month;

B) Wal-Mart shall continue the Project and providing the monthly statements to the Department until Wal-Mart has expended \$1,050,000.00;

C) Wal-Mart has submitted to the Department a cost estimate for the Project based on a per-weight of pesticides collected and the Department has approved the estimate;

D) Wal-Mart agrees that the Department may challenge the costs applied to the Project if they are not in conformance with the cost estimate. Any disputes regarding the appropriateness of the costs applied to the Projects shall be subject to the dispute resolution provisions of Paragraph 4 of this Settlement Agreement. Legal fees shall not qualify as a covered cost;

E) If it is ultimately determined through dispute resolution that the costs applied to the Project were not in conformance with the cost estimate, within 15 days of written demand by the Attorney General, Wal-Mart shall pay to the Department the costs determined not to be in conformance with the cost estimate plus a stipulated penalty of 25% of such nonconforming costs. In the event the stipulated penalty becomes due and owing, Wal-Mart shall remit payment in accordance with Paragraph 2(a) of this Settlement Agreement;

F) Wal-Mart agrees that the Department will review and approve the advertisements and promotions of the pesticide collection events to assure proper content prior to Wal-Mart using the advertisements and promotions for the collection events. Wal-Mart shall not make any reference to Wal-Mart stores or Sam's Clubs in any of the advertisements or promotions. Advertisements and promotion of collection events shall occur at a minimum of three weeks prior to the event. The advertisements and promotions shall

identify the Department as a coordinator of the events and shall identify a contact person at the Department;

G) Within thirty days after the Effective Date, Wal-Mart or its designee shall submit a pesticide collection program plan to the Department for review and approval. The pesticide collection program plan shall include the qualifications of the company or companies that will perform the collections, cost estimates per-weight collected, schedule for collection events, hours of operation for the events to adequately serve the community, and estimated number of personnel who will be used to perform the collection. The pesticide collection program plan shall identify the permitted treatment, storage, and disposal or resource recovery facility(ies) that will be used and any alternates, the licensed hazardous waste transporter(s) that will be used and any alternates, and any other facility that will be used to manage any non-hazardous waste collected. The pesticide collection program plan shall summarize the procedures that will be used to pack, transport and dispose of pesticides;

H) Changes to the pesticide collection program plan must be approved by the Department in advance;

I) The pesticide collection program shall comply with the "Standard Procedures for Waste Pesticide Collection Programs in Missouri Under the Universal Waste Rule" dated September 9, 1998 ("Standard Procedures"), provided however, the pesticide collection program shall not be required to comply with General Standards Nos. 1, 5, 7, and 12 of the Standard Procedures. In addition, non-hazardous waste collected from the pesticide collection program can be sent to licensed disposal facilities outside the state of Missouri and to hazardous waste treatment, storage and disposal facilities permitted under the Resource Conservation and Recovery Act, in addition to those facilities identified in the

Standard Procedures. The pesticide collection program shall also comply with Missouri Solid and Hazardous Waste Laws and implementing regulations applicable to the waste being accepted;

J) Once pesticide collection events have commenced, Wal-Mart shall provide the Department monthly reports that summarize the types and amounts of pesticides collected, copies of all Uniform Hazardous Waste Manifests generated as part of the Project from the previous month and the total amount of pesticides collected to date. This monthly report is due the 20th of every month and shall continue until Wal-Mart has expended \$1,050,000.00;

K) The first event shall occur in the Neosho, Missouri area. Additional events shall occur as monies allow in this order: two events in the Kennett/Sikeston/Popular Bluff area; and one event in each of the following areas: eastern Buchanan and Dekalb Counties; Howard County; Macon area; Oak Grove/Odessa area; and Warrenton/Wentzville area. If monies remain after the events in these areas, the Department will work with Wal-Mart to identify additional pesticide collection areas for events or, if demand for such collection events is not strong, other ways to expend any unused monies until all monies are expended, at which time Wal-Mart's obligations under this Section 3 shall be considered complete;

L) Pesticide collection events shall be conducted within twelve (12) months from the Effective Date of this Settlement Agreement and in accordance with the schedule in the pesticide collection program plan approved by the Department pursuant to Paragraph 3.G herein. If additional time is needed to complete the pesticide collection events, Wal-Mart shall request an extension from the Department;

M) If Wal-Mart does not complete the pesticide collection events and has not requested an extension from the Department within twelve (12) months from the Effective Date of this Settlement Agreement, upon request of the Attorney General, Wal-Mart shall remit to the Department that portion of the \$1,050,000.00 which has not been spent, along with a stipulated penalty of 25% of the amount which has not been spent, within 15 days of written demand by the Attorney General. Payments shall be remitted in accordance with Paragraph 2(a) of this Settlement Agreement.

N) If Wal-Mart requests an extension from the Department and does not complete the pesticide collection events within the extended time period allowed by the Department, upon request of the Attorney General, Wal-Mart shall remit to the Department that portion of the \$1,050,000.00 which has not been spent, along with a stipulated penalty of 25% of the amount which has not been spent, within 15 days of written demand by the Attorney General. Payments shall be remitted in accordance with Paragraph 2(a) of this Settlement Agreement.

O) The Department will provide oversight for the pesticide collection events. All waste generated from the pesticide collection events shall be disposed of with the Department identified as the generator. Any hazardous waste generated shall be disposed of using a hazardous waste generator identification number provided by the Department. The Department shall provide on-site staff during the pesticide collection events and to sign Uniform Hazardous Waste Manifests; and

P) The pesticide collection events will serve individual households and small or family farmers. Wal-Mart or its designee conducting the events will not accept any pesticides from any businesses, pesticide production facilities, pesticide distributors, pesticide retailers, or the like. Locations chosen for the events will be mutually acceptable to Wal-

Mart and the Department. The Department provided Wal-Mart with the names and contact information of persons and/or entities which may be able to provide locations for the events.

4. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Settlement Agreement.

A. Informal Dispute Resolution. Any dispute under this Settlement Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Wal-Mart sends the Department a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date of the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Department shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Wal-Mart invokes formal dispute resolution procedures as set forth below.

B. Formal Dispute Resolution. Wal-Mart shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the Department a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Wal-Mart's position and any supporting documentation relied upon by Wal-Mart.

C. The Department shall serve its Statement of Position within sixty (60) Days of receipt of Wal-Mart's Statement of Position. The Department's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Department. The

Department's Statement of Position shall be binding on Wal-Mart, unless Wal-Mart files a petition for judicial review of the dispute in accordance with the following subparagraph.

D. Wal-Mart may seek judicial review of the dispute by filing with a court having jurisdiction and serving on the Department, a petition requesting judicial resolution of the dispute. The petition must be filed within fifteen (15) Days of receipt of the Department's Statement of Position pursuant to the preceding subparagraph.

E. The Department shall respond to Wal-Mart's petition within the time period allowed by the Missouri Supreme Court Rules of Civil Procedure and any Local Rules of the reviewing court.

F. The invocation of dispute resolution procedures under this section shall not, by itself, extend, postpone, or affect in any way any obligation of Wal-Mart under this Agreement not in dispute. As part of the resolution of any dispute under this Section, in appropriate circumstances the disputing Parties may agree, or a Court may order, an extension or modification of the schedule for the completion of the work required under this Settlement Agreement.

5. The Department and Attorney General agree not to bring or cause to be brought any civil action against Wal-Mart or its officers, directors, employees or agents for violations alleged in NOV Number 5580E or any civil action that could be made against Wal-Mart or its officers, directors, employees or agents arising out of its past relationship with Greenleaf, including matters involving the two Greenleaf facilities located at 13960 Palm Road, Neosho, MO 64850 and 420 Highway 71 Business South, Pineville, MO 64843, except to enforce the terms of this Settlement Agreement. Notwithstanding the foregoing, the Department and the Attorney General reserve their respective rights against Walmart if additional facilities are identified which had been owned and/or operated by Greenleaf and to which Walmart's products

had been sent for reuse and re-sale, to require Walmart to conduct a removal and/or response action at such facilities. In any such future action, Walmart reserves its rights to all applicable defenses.

6. The Attorney General will send Wal-Mart a fully executed copy of this Settlement Agreement.

7. The Effective Date of this Settlement Agreement shall be the date the Attorney General signs the Settlement Agreement.

8. Subject to the provisions of Paragraph 5 of this Settlement Agreement, the Department, the Attorney General, and the State of Missouri reserve the right to pursue any claims or causes of action they may have against any additional parties, and this Settlement Agreement is not a release of any claims against other potentially liable parties, nor shall it be construed as preventing any other governmental entities from taking any action against Wal-Mart.

9. Nothing in this Settlement Agreement shall preclude the State from seeking equitable or legal relief for future violations of the Hazardous Waste Management Law and its implementing regulations.

10. Wal-Mart further agrees to comply in the future with all provisions of the Hazardous Waste Management Law and its implementing regulations. However, to the extent that Wal-Mart fails to comply with the Hazardous Waste Management Law and its implementing regulations in the future, it shall not constitute a breach of this Settlement Agreement.

11. The terms stated herein constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they express or implied, oral or written, except those which are expressly set out in this Settlement Agreement. The terms of this Settlement Agreement supersede all previous memoranda of understanding, notes, conversations, and agreements, whether express or implied.

12. The Agreement may only be modified in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement
as follows:

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: [Signature]
Alan Reinkemeyer, Acting Director
Division of Environmental Quality

Date: February 27, 2012

WAL-MART STORES, INC.

By: [Signature]

Title: W. Reinkemeyer, Acting Director

Date: 9/15/12

MISSOURI ATTORNEY
GENERAL'S OFFICE

CHRIS KOSTER
Attorney General of Missouri

By: [Signature]
Laura Bailey Brown
Assistant Attorney General

Date: MARCH 2012